

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 93-5

In the Matter of

Elimination or Revision of Certain
Reporting Requirements under Part 43 of
the Commission's Rules, Reports of
Communication Common Carriers and
Certain Affiliates.

NOTICE OF PROPOSED RULEMAKING

Adopted: January 11, 1993; Released: February 2, 1993

Comment Date: March 22, 1993

Reply Comment Date: April 6, 1993

By the Commission:

I. INTRODUCTION

1. We initiate this proceeding to eliminate certain reporting requirements under Part 43 of our Rules, Reports of Communications Common Carriers and Certain Affiliates. This item is part of the Commission's Regulatory Reform Program to evaluate existing regulations and to accelerate action on initiatives that will eliminate any unnecessary regulatory burden and promote economic growth. We propose to eliminate Section 43.42, Reports on pensions and benefits, 47 C.F.R. §43.42. We also propose to amend Section 43.21(c), 47 C.F.R. §43.21(c), by raising the reporting limit for companies which control common carriers and which are required under Section 43.21(c) to file Annual Report Form 10-K (Form 10-K) with the Commission.¹

II. DISCUSSION

2. In recent months we have undertaken a review of our reporting requirements to determine those reports which are no longer necessary or which should be modified to meet our current regulatory needs. Through this process

we have found certain reporting provisions under Part 43 that we believe require communications common carriers or owners of communications common carriers to submit data and documents which we no longer need. These requirements were originally established to provide us with information relevant to our regulatory purposes, but the information that they contain is no longer needed on a routine basis or can now be obtained from other sources. We have tentatively concluded that these requirements can be eliminated or modified without harm to the public. Implementation of the changes we propose will result in savings to the public by reducing industry reporting burdens and to the Commission by reducing the cost of processing the filings and maintaining them in storage. The subject areas in Part 43 are discussed below.

A. Elimination of Pension and Benefits Data Filing

3. Section 43.42 of our Rules requires communications common carriers with annual revenues of \$100 million or more to file with this Commission copies, or detailed descriptions, of their pension and benefits plans, along with other documents and details related to such plans. We propose to eliminate these requirements by deleting Section 43.42 from our Rules.

4. Pension and benefit costs have been an important matter for the telephone industry and regulators because these expenses have long represented a significant portion of the carriers' operating expenses. For example, in 1991 these expenses accounted for almost 9 percent of the total operating expenses (\$4.5 billion of \$50.9 billion) for the seven Regional Bell Operating Companies.² These pension and benefit costs have been among the most closely scrutinized by regulators because, by their very nature, they must be based upon long-term forecasts of various parameters that are difficult to estimate, and which rely on estimates and actuarial assumptions.³ Because of the importance of pension and benefit costs, filing requirements were established to permit the Commission to monitor and evaluate carriers' cost estimates, funding practices, and the soundness of the plans. In recent years there have been substantial changes in the laws for the oversight of pension plans and in the generally accepted accounting principles applicable to the accounting for pension plans, yet our filing requirements have remained substantially unchanged for more than 20 years.⁴

5. In 1974, Congress passed the Employee Retirement Income Securities Act (ERISA) which established standards of conduct for pension and welfare benefits plans and had a substantial impact on the funding and administration of such plans. ERISA is now the principal legislation governing private pension funds. The ERISA rules require that

¹ Form 10-K is a Security and Exchange Commission report containing annual financial statements and other financial data and is required to be filed by certain companies whose stock is publicly traded.

² Source: Preliminary Statistics of Communications Common Carriers for the year ending December 31, 1991, released by the Commission September 10, 1992.

³ Various assumptions and forecasts need to be made when estimating pension and benefits cost. Examples include interest rates to be used for actuarial earnings, rate assumptions, mortality, withdrawal, disability and retirement rates.

⁴ The only exception was in 1988 when the Commission

amended Section 43.42 to reduce the number of communications common carriers who must file pension reports with us. Section 43.42(a) of our rules previously required carriers with operating revenues in excess of \$1 million for the preceding year to file specified reports on their employee pension and benefits plans. We amended Section 43.42(a) by requiring the filing of these reports only by carriers which we determined to be "dominant" carriers and which had operating revenues for the preceding year in excess of \$100 million. We made no change in the contents of the reports to be filed. See *Report and Order*, CC Docket No. 87-134, 3 FCC Rcd 6908 (1988).

plan assets be held in trust under stringent fiduciary standards. The rules also provide standards for transactions between pension plan funds and employers.

6. ERISA requirements are enforced jointly by the Internal Revenue Service (IRS) and the Department of Labor (DOL) which have specific reporting and disclosure requirements that apply to private pension plans. IRS annual reporting requirements provide for the filing of plan descriptions, plan financial statements, insurance and actuarial information, and plan asset summaries. The DOL requires companies to submit summary plan descriptions including statements of rights under their plans. Additionally, ERISA rules include requirements for audits by DOL and independent public accounting firms and provisions that plan participants receive summary descriptions of their plan and annual summaries of plan financial statements.

7. ERISA established the Pension Benefit Guarantee Corporation (PBGC) to guarantee payment in the event that a defined benefit plan is terminated because funds are not sufficient to pay the benefits that are or will be due. PBGC receives quarterly and annual reports from the pension funds covered by the guarantee.

8. In addition to the changes brought about by ERISA, the Financial Accounting Standards Board (FASB) has issued three Statements of Financial Accounting Standards (SFAS) to provide guidance for accounting for pension and benefits costs.⁵ The changes that have resulted from the ERISA requirements and the generally accepted accounting principles issued by the FASB have brought about a greater degree of uniformity in the process of estimating and accounting for pension and benefits costs. With the greater uniformity and increased oversight provided by other agencies there is a reduced need for our collection of pension and benefit data. For example, since the pension expenses included in reports to this Commission are now determined on a more consistent basis there is no need to require carriers to file the underlying details of their pension and benefits plans. We can accomplish our necessary oversight with the pension data currently being reported in the Automated Reporting Management Information System USOA Report 43-02, Table VIII, Pension Cost, and, as necessary, with specific data requests to the carriers.

9. We request comment on our proposal to eliminate Section 43.42 of our Rules requiring common carriers to file pension and benefits documents and data.

B. Amendment of Section 43.21(c) Requirement for Filing Annual Report Form 10-K

10. Section 43.21(c) requires any company, not itself a communications common carrier, that directly or indirectly controls any communications common carrier having annual revenues in excess of \$2.5 million to file annually with the Commission complete copies of any Forms 10-K filed with the Securities and Exchange Commission. We propose to amend this requirement by increasing the specified revenue level from \$2.5 million to \$100 million.

11. The current requirement to receive Forms 10-K from companies that control common carriers is not consistent with our regulatory needs. This Commission does not routinely require financial reporting from communications common carriers with annual operating revenues less than \$100 million. We have tentatively concluded, therefore, that there is no need to receive financial reports from a controlling company when the controlled communications common carrier does not have annual operating revenues in excess of \$100 million. This proposed change, if adopted, would, therefore, make the Section 43.21(c) requirement consistent with other Part 43 reporting requirements for communications common carriers.

12. We request comments on our proposal to amend Section 43.21(c) by increasing the specified revenue limit for reporting so that its provisions will apply to only those companies that directly or indirectly control communications common carriers with revenues in excess of \$100 million annually. We also invite comment on whether an alternative threshold, other than \$100 million, should be adopted as the specified revenue limit for filing the Forms 10-K with this Commission.

III. PROCEDURAL MATTERS

13. *Ex Parte Rules - Non - Restricted Proceeding.* This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 C.F.R. Sections 1.1202, 1.1203, and 1.1206(a).

14. *Regulatory Flexibility.* We certify that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendments are promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. Carriers providing interstate services affected by the proposed rule amendment generally are large corporations or affiliates of such corporations. The Secretary shall send a copy of this Notice of Proposed Rulemaking, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq* (1981).

15. *Comment Dates.* Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before **March 22, 1993** and reply comments on or before **April 6, 1993**. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Washington, D.D. 20554.

⁵ The FASB is the authoritative standard setting body for accounting practices that are used in the American business community. The FASB issued SFAS No. 87, Employers' Accounting for Pensions, in 1985; SFAS No. 88, Employers' Ac-

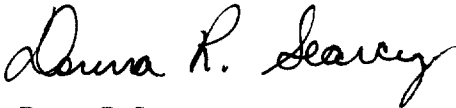
counting for Settlements and Curtailments of Defined Benefit Pension Plans and for Termination Benefits, in 1985; and SFAS No. 106, Employers' Accounting for Postretirement Benefits Other Than Pensions, in 1990.

16. For further information on this proceeding, contact the Accounting Systems Branch, Room 812, 2000 L Street, N.W., Accounting and Audits Division, F.C.C., Washington, D.C. 20554, (202) 634-1861.

IV. ORDERING CLAUSE

17. Accordingly, IT IS ORDERED that, pursuant to Sections 4, 218, 219, 220 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 218, 219, 220, and 303, NOTICE IS HEREBY GIVEN of proposed amendments to Parts 43.21 (c) and 43.42 of the Commission's Rules, 47 C.F.R. §43.21 (c) and §43.42 as described in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION



Donna R. Searcy
Secretary

APPENDIX

47 CFR, Part 43 is amended as follows: Part 43 - Reports of communication common carriers and certain affiliates

1. The authority citation for Part 43 continues to read as follows:

Authority: Sec 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted.

1. Paragraph (c) of Section 43.21 is revised to read as follows:

43.21 Annual reports of carriers and certain affiliates.

(c) Each company, not of itself a communication common carrier, that directly or indirectly controls any communication common carrier having annual revenues in excess of \$100 million shall file annually with the Commission, not later than the date prescribed by the Securities and Exchange Commission for its purposes, two complete copies of any annual report Forms 10-K (or any superseding form) filed with that Commission.

2. Section 43.42 is removed.
